

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MITCHELL LEE VARNELL,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF
CORRECTIONS, KENNETH
SAWYER, CHARLES CASEY,
HOWARD YARDLEY, SARA SMITH,
DAVID KENNEY, and STEVEN
HAMMOND,

Defendants.

CASE NO. C15-5443 BHS-DWC

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO FILE
THIRD AMENDED COMPLAINT

The District Court has referred this 42 U.S.C. §1983 action to United States Magistrate Judge David W. Christel. Presently before the Court are Plaintiff's Motion for Leave to File Third Amended Complaint (Dkt. 41) ("Motion") and Plaintiff's Praecipe Motion (Dkt. 72) ("Praecipe Motion").

1 **A. Motion** (Dkt. 41)

2 Plaintiff's proposed Third Amended Complaint is attached to the Motion. *Id.* Pursuant to
3 Rule 15(a) of the Federal Rules of Civil Procedure,

4 **(1) *Amending as a Matter of Course***

5 A party may amend its pleading once as a matter of course within:

6 (A) 21 days after serving it, or

7 (B) if the pleading is one to which a responsive pleading is required,
8 21 days after service of a responsive pleading or 21 days after
9 service of a motion under Rule 12(b), (e), or (f), whichever is
10 earlier.

11 **(2) *Other Amendments***

12 In all other cases, a party may amend its pleading only with the
13 opposing party's written consent or the court's leave. The court
14 should freely give leave when justice so requires

15 Defendants filed an Answer -- a responsive pleading -- on February 5, 2016. Dkt. 30.
16 Plaintiff effectively filed the Motion on April 6, 2016, which was more than 21 days after the
17 Answer was filed. *See* Dkt. 41. On April 15, 2016, Defendants objected to the Motion. *See* Dkt.
18 47. On May 25, 2016, however, Defendants withdrew their objection. Dkt. 68. As such,
19 Plaintiff has Defendants' consent to amend and may amend his complaint without leave of the
20 court as provided under Rule 15(a)(2) of the Federal Rules of Civil Procedure.

21 Accordingly, the Motion is granted, and Plaintiff's proposed Third Amended Complaint,
22 attached to the Motion, is hereby deemed filed as Plaintiff's Third Amended Complaint. *See* Dkt.
23 41-1. The Clerk is directed to separately docket the proposed amended complaint (Dkt. 41-1) as
24 Plaintiff's Third Amended Complaint.

 The Court notes the Third Amended Complaint supersedes the original Complaint. *See*
Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9th Cir. 1992).

1 **B. Praeipie Motion** (Dkt. 72)

2 On June 1, 2016, Plaintiff filed the Praeipie Motion requesting the Court to add an
3 attachment (Dkt. 22-1) to his proposed second amended complaint (Dkt. 24-1,2) and to combine
4 all of those documents and consider them plaintiff's "entire second amended complaint." Dkt.
5 72. Additionally, Plaintiff requests the Court to "relitigate" plaintiff's motion for preliminary
6 injunction (Dkt. 32). *Id.*

7 The Court finds Plaintiff's request to combine the various documents for a new
8 seconded amended complaint is denied as moot in light of the Court granting of the Motion
9 above, which allows the Third Amended Complaint to be filed. Further, the Court will not allow
10 combinations of various documents and attachments to make one operative complaint. As for
11 Plaintiff's request to "relitigate" his preliminary injunction motion, the Court notes Plaintiff filed
12 a motion for reconsideration (Dkt. 69) which District Judge Benjamin H. Settle has denied (Dkt.
13 70). Moreover, pursuant to Judge Settle's Order Adopting in Part Report and Recommendation
14 (Dkt. 66), a portion of the preliminary injunction motion remains for the Court's consideration
15 on which Plaintiff has been given an opportunity to provide supplemental briefing.

16 Accordingly, Plaintiff's Praeipie Motion (Dkt. 72) is denied.

17 Dated this 6th day of June, 2016.

18
19 

20 David W. Christel
21 United States Magistrate Judge